

**HONOURABLE SRI JUSTICE C.Y. SOMAYAJULU**

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**W.P.No.6792 of 1996**

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**Dated 15<sup>th</sup> September, 2005**

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Between:

B. Rajagopal Krishnaiah,  
S/o.Late Sri Papaiah, aged about 84 years,  
Betavolu village, Gudivada Mandal,  
Krishna District and 28 others .. Petitioners

And

The District Collector,  
Krishna District, Chilakalapudi  
at Machilipatnam and two others .. Respondents

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**ORAL ORDER:**

(1) This petition is filed questioning the proposed acquisition of Ac.30.80 cents in R.S.No.70 in possession of the petitioners, who are 21 in number, under the Land Acquisition Act (for short "the Act").

(2) The case of the petitioners is that they are all small farmers depending only on the income from the land in their possession, and so, when the Collector, Krishna District (1<sup>st</sup> respondent) proposed to acquire the aforesaid Ac.30.80 cents in their possession to provide house-sites to weaker sections of the society, they filed W.P.No.4507 of 1983 questioning the proposed acquisition, which was allowed on 7.3.1986, *inter alia* on the ground of their being small farmers and without keeping that order in view, 1<sup>st</sup> respondent erroneously re-proposed to acquire their land even without following the procedure prescribed by the Act, and by wrongly showing the land proposed to be acquired as belonging to Bavaji Mutt (Biragi Manyam). When a Division Bench of this Court, in A.S.No.496 of 1963, dated 12.3.1991, which was confirmed by the Apex Court, held that they are the owners thereof, by dispensing with the enquiry under Section 5A of the Act though there is no real urgency.

(3) 2<sup>nd</sup> Respondent filed his counter affidavit on behalf of the respondents *inter alia* contending that the land proposed to be acquired does not belong to the petitioners, but belongs to Bhavaji Matam and that the earlier W.P.No.4507 of 1993 was allowed because the substance of the notification made under Section 4(1) of the Act was not published in the locality. In view of the representations received from the public during Prajalavaddaku Palana, first respondent published the notification under Section 4(1) of the Act in Krishna District Gazette extraordinary dated 15.3.1996 followed by the other procedure prescribed by the Act. The Assistant Commissioner of Endowments, being the competent authority, handed over possession of Ac.33.00 cents in R.S.No.70 to the Revenue Department on 26.3.1996 under a Panchanama. Since the revenue records show that Singarayapalem Matam is the pattadar of the acquired land, and since petitioners failed to produce records showing their ownership rights in the land proposed to be acquired and since no other lands, suitable for use of house-sites are available in that area keeping in view the urgency enquiry under Section 5A of the Act was dispensed with, and so, petitioners are not entitled to any

relief.

(4) Reply affidavit is filed on behalf of the petitioners traversing the allegations in the counter affidavit filed on behalf of the respondents.

(5) The main contention of the learned counsel for the petitioners, by placing strong reliance on ***The Director of Settlements, Hyerabad Vs. Neerupaka Rama Krishna*** is that the order dated 7.3.1998 in W.P.No.4907 of 1983 quashing the earlier notification for acquisition of the very same land, *inter alia* on the ground of the petitioners being small farmers, operates as *res judicata*. Relying on ***K.Ramulu Vs. State of Andhra Pradesh***, he contended that since repeated acquisition of land from the same party violates Article 14 of the Constitution of India, respondents' repeated attempt to acquire the land of the petitioners violates Article 14 of the Constitution of India. Relying on ***A. Kotireddy and Others Vs. The District Collector, Guntur*** and ***State of Uttar Pradesh Vs. Radhey Shyam Nigam and Others*** he contended that declaration under Section 6 of the Act can be published only after publication of the notification under Section 4(1) of the Act, but not along with that notification. Relying on the documents produced by the petitioners along with the additional affidavit filed in support of this petition and the report of the Commissioner appointed by virtue of the order dated 7.2.2005, he contended that since those documents clearly establish the possession of the petitioners over the land proposed to be acquired, the contention of the respondents that the land was already taken possession of cannot be believed or accepted since no symbolic delivery of possession is contemplated by the Act as held in ***Balwant Narayan Bagde Vs. M.D.Bhagwat and others***.

(6) The contention of the learned Assistant Government Pleader is that notification under Section 4(1) of the Act was published in Krishna District Gazette on 15.3.1996 and substance thereof was published in the locality on 31.3.1996 and the notification under Section 4(1) of the Act was published in Eenadu Telugu daily on 19.3.1996 and Pledge English daily on 19.3.1996 and the Draft

Declaration under Section 6 of the Act was published in the Krishna District Gazette on 19.3.1996 and in the Eenadu Telugu daily on 26.3.1996 and Janatha Daily on 27.3.1996, and so, the contention of the petitioners that notification under Section 4(1) and the declaration under Section 6 of the Act were published on the same day is not correct. It is his contention that since the petitioners, after obtaining stay from this Court, have highhandedly entered into possession of the property, their entry into the property under the guise of the stay granted by this Court cannot be made a ground for seeking the relief claimed in the petition. It is his contention that inquiry under Section 5A of the Act was dispensed with in view of the urgency and contended that since petitioners did not allege that they are tenants of small extents of land belonging to Matam, they are not entitled to any relief.

(7) The contention that order dated 7.3.1986 in W.P.No.4907 of 1983 operates as *res judicata* in this case cannot be accepted because question whether the person whose land is sought to be acquired is a small farmer or not has to be decided as on the date of notification, as there is a possibility of the individual acquiring property subsequent to the disposal of the earlier petition. The order in W.P.No.4907 of 1983 shows that the petitioners therein were presumed to be small farmers because no counter, denying their allegation that they are small farmers, is filed by the respondents. The notification impugned in this petition is of the year 1996 i.e. about 13 years after the disposal of W.P.No.4907 of 1983. So, question whether petitioners continued to be small farmers or not by the date of the notification impugned in that petition is a question of fact to be decided on the basis of the land holding of each petitioner in 1996 but on the basis that they were held to be small farmers in 1983, and so, the impugned notification cannot be quashed by invoking the doctrine of *res judicata*.

(8) The contention of the learned counsel for the petitioners is that petitioners are the legal representatives of some of the appellants in A.S.No.496 of 1963. It is not so alleged in the affidavit filed in support of this petition. Even assuming that petitioners are legal

representatives of some of the appellants in A.S.No.496 of 1963, since the finding of the Court in A.S.No.496 of 1963 is that the grant was “Darmadayam Sadavrith”, petitioners may not be considered as owners of the land. In that A.S.No.496 of 1963, point for consideration was whether the land covered by the suit belongs to the “Matham” or to the Head of the Matham. The Court, while allowing the appeal holding that the land has to be managed by the Head of the Matham for performance of Sadavrithi i.e. feeding of Byragis, observed as follows:

“As the confirmation was in favour of the present Head of the Matham and the present head being Ganga Dass, the entries in column Nos.2, 8, 10, 14, 15, 16 to 21 make absolutely clear that the grant was in favour of an individual Sevadass and that grant was made to a named individual burdened with the obligation of performing “Sadavrith” i.e. feeding the Byragis”.

The said judgment was confirmed by the Apex Court. So, it cannot, in any event be said that petitioners have an absolute title over the land because the income has to be spent for feeding Byragis and cannot absolutely be enjoyed by them as their own income. So, it would be an endowment and that is the reason why respondents obtained the permission of the Commissioner of Endowments, before notifying the said land for acquisition.

(9) **K. Ramulu’s** case, relied upon by the learned counsel for the petitioners, has no application to the facts of this case because the facts in that case are entirely different from the facts of this case. Out of Ac.20.00 cents owned by the petitioner in that case, Ac.10.00 cents were acquired in 1958 for public purpose of establishing a seed farm. In March, 1976, Ac.3.30 gts. of land belonging to him were acquired for providing house-sites to harijans. The case of the petitioner therein is that Ac.03.00 cents belonging to him was under forcible occupation of third parties and that he is left with only Ac.2.15 gts. which is sought to be acquired for providing house-sites to harijans. In the circumstances of that case, it was held that repeated

acquisition of the property of the petitioner therein for public purpose would be violative of Article 14 of the Constitution. Since it is not even the case of the petitioners that any part of their land was acquired earlier for any public purpose, the said decision is of no help to them.

(10) Since notification under Section 4(1) of the Act and the declaration under Section 6 of the Act were published on different dates i.e. since Section 4(1) notification was published in the District Gazette on 15.3.1996 and in the news paper on 19.3.1996, and since the draft declaration under Section 6 of the Act was published in the District Gazette on 19.3.1996 and in the news paper on 26.3.1996 and 27.3.1996, the ratio in *A.Koti Reddy and Others* (3 supra) and *Radhey Shyam Nigam's* case (4 supra) has no application to the facts of this case.

(11) Earlier, when this writ petition came up for hearing on 7.2.2005 before my learned brother R.Subhash Reddy. The directed the 3<sup>rd</sup> respondent to inspect the land in R.S.No.70 of Bethavolu village, sought to be acquired under the impugned notification, and record the physical features as on that day and send his report. Accordingly, 3<sup>rd</sup> respondent inspected the land on 7.3.2005 and reported that land to an extent of Ac.11.75 cents is covered by 203 dwelling houses of encroachers and that the remaining extent of Ac.27.05 cents is under cultivation of the tenants of Bavaji Mattam and that black gram crop is raised therein by the tenants. Here, it should be stated that while admitting this writ petition on 4.4.1996, interim stay of eviction of the petitioners from Ac.33.00 cents in R.S.No.70 of Bethavolu village was granted in W.P.M.P.No.8318 of 1996. Thereafter, respondents filed W.V.M.P.No.3505 of 1996 to vacate the stay granted in W.P.M.P.No.8318 of 1996. A learned Judge, who heard that W.P.M.P. and W.V.M.P., by the common

order dated 30.7.1997, directed both the parties to maintain status quo till the disposal of the case. Since the writ petition was filed on 1.4.1996 shortly after the taking over of the possession of the land on 26.3.1996, petitioners re-entering the land taking advantage of the order of stay granted on 4.4.1996 cannot be ruled out, and so, the various documents filed by the petitioners along with the additional affidavit which are all subsequent to the institution of this petition and subsequent to the stay order, which shows payment of land revenue by them, are not of much help in deciding this case.

(12) The other contention of the learned counsel for the petitioners relates to dispensing with the enquiry under Section 5A of the Act. I find force in the said contention because, the Apex Court, in ***Union of India Vs. Krishnalal Arneja and Others and Union of India Vs. Mukesh Hans*** held that enquiry under Section 5A of the Act is a valuable right and that unless there is real urgency which does not brook any delay, and unless the authority concerned really takes into consideration the fact situation and applies his mind thereto and comes to a conclusion that it is a fit case to dispense with the enquiry under Section 5A of the Act, enquiry under Section 5A of the Act is mandatory.

(13) Purpose of acquisition in this case is to provide house-sites to harijans for which there can be no real urgency because enquiry under Section 5A of the Act does not take much time. For that reason and since the record produced by the respondents does not disclose application of mind to the fact situation by the 1<sup>st</sup> respondent, it is a *prima facie* case of 1<sup>st</sup> respondent ordering dispensation of the enquiry under Section 5A of the Act in a routine and mechanical manner. So, order dispensing with the enquiry under Section 5A of the Act only is liable to be quashed, but there are no grounds to quash the notification under Section 4(1) of the Act or the declaration under Section 6 of the Act.

(14) Hence, the writ petition is allowed in part with a direction to the respondents to hold enquiry under Section 5A of the Act as expeditiously as possible, at any rate, within a period of 30 days from the date of receipt of a copy of this order and proceed further as per law. No order as to costs.

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15.09.2005

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